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# Collection of a State's Taxes in Other Jurisdictions

The instances appear to be comparatively few, as revealed by the decided cases, in which a state or county official has entered the courts of another state to recover taxes levied in his own state, which he was administering. Some of the more recent decisions are:

A Pennsylvania county court has recently declined to entertain a suit by an Ohio county treasurer for Ohio personal property taxes assessed while the defendant was a resident there, under circumstances where the taxes had not been reduced to judgment.[1] In its opinion, the court observed that the Supreme Court of the United States had not expressed an opinion on such a question.

A federal court has indicated it would not entertain suit where a state official came into that court from another state to recover money alleged to be due in connection with personal income taxes which he administered. There the dismissal of the suit was grounded upon lack of jurisdiction, there being no diversity of citizenship, as a state "is not a citizen of itself or of any other state, and so is not entitled to invoke the federal courts on that ground."[2] A federal court has also dismissed a suit for want of jurisdiction where a state official has entered a federal court in his own state to collect the state's privilege taxes.[3] The Supreme Court of the United States has ruled that an Indiana official, seeking to recover property taxes, had no legal capacity to sue in a New York federal court, as the Indiana laws were the sole source of his authority and could give no effect to them beyond that state's limits.[4] A like refusal to enforce the revenue laws of a state is to be found where one state enters the courts of another state to enforce the payment of the former's transfer taxes.[5]

Where, however, the tax has been reduced to judgment in a state court of the state in which the tax was levied, the Supreme Court of the United States has ruled that a federal court in another state might entertain jurisdiction of an action for income taxes based upon a valid judgment for over $3,000, where the defendant was the same in each suit.[6] Likewise, a judgment for corporate franchise taxes obtained in New York was held by the highest court in New Jersey to be entitled to full faith and credit in a suit on that judgment in New Jersey.[7]

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[1] *County Treasurer of Hamilton County, Ohio v. Hartzell*, Court of Common Pleas, Montgomery County, July 3, 1945; see page 34.

[2] *People of the State of California ex rel. McColgan v. Bruce*, (1942) 129 F. 2d 421.

[3] *Craig, State Tax Collector of State of Mississippi v. Southern Natural Gas Co.*, (1942) 125 F. 2d 66.

[4] *Moore, Treasurer of Grant County, Indiana v. Mitchell et al.*, (1930) 281 U. S. 18.

[5] *In re Martin's Estate*, 136 Misc. 51, 240 N. Y. S. 393.

[6] *Milwaukee County v. M. E. White Co.*, (1935) 296 U. S. 268.

[7] *People of the State of New York v. Coe Mfg. Co.*, (1934) 172 Atl. 198, certiorari denied, 293 U. S. 576.

# Domestic Corporations

**Delaware.**

**Chancery Court approves settlement agreement for disposal of pending suits involving payment to a Delaware corporation by a Pennsylvania company.** The individual defendants, directors of the Pennsylvania Railroad Company, brought about the organization of The Pennroad Corporation and became its officers and directors and the voting trustees of its stock. It was contended that, in administering Pennroad's affairs they were motivated primarily by a desire to promote the corporate interests of the railroad company, with consequent damage to Pennroad. This suit in the Court of Chancery had long remained inactive. Seven years after the bill was filed, two suits, ultimately tried together, with complaints substantially similar to those in this case, were brought in a Pennsylvania Federal District Court, with similar parties on either side. Several opinions were rendered. An appeal was taken to the Circuit Court of Appeals. The majority of the judges affirmed the judgment of the District Court in favor of the individual defendants and decided that a judgment against the railroad company should be reversed and the case remanded with directions to enter judgment in its favor, concluding that the state statutes of limitation barred the claims. The lower court judgment against the railroad company was for $22,104,515. The mandate of the Circuit Court had not been issued to the District Court at the time of the hearing of the present petition, because application had been granted by the Circuit Court extending the time for filing a petition for rehearing. About three months prior to the hearing in the Delaware court, negotiations were begun between the two corporations for a settlement of the controversies and to dispose of all pending suits in both the Federal and State courts, involving a compromise payment by the railroad company to Pennroad of $15,000,000. The Chancery Court reached the conclusion, from the evidence, that in entering into the settlement the directors were free from disqualifying interests, and that they acted in good faith. The court observed that as a result of this finding, there was no need to inquire into the merits of the settlement. "This," remarked the Vice Chancellor, "is but an application of the general rule expressed in Section 9 of the Delaware Corporation Law, Rev. Code of Del. (1935) Section 2041, thus: 'The business of every corporation * * * shall be managed by a board of directors * * *.'" The settlement agreement was therefore approved. *Perrine et al. v. The Pennroad Corporation et al.*, Court of Chancery, New Castle County, August 9, 1945. Commerce Clearing House Court Decisions Requisition No. 343866.

**Illinois.**

**Shareholder denied writ compelling inspection of corporate books and records where he failed to allege and prove a proper purpose.** Petitioner, a stockholder in defendant corporation, sought a writ of

mandamus to compel the corporation and its officers to permit him to examine the books and records showing the names of the shareholders, etc., of the corporation. Defendants alleged the petition failed to show plaintiff had complied with the provisions of Sec. 45 of the Business Corporation Act as he had not alleged and proved that the examination was for a "proper purpose". The lower court had entered an order for the writ as prayed for. Upon appeal, the Appellate Court of Illinois, First District, First Division, after noting that there was no allegation in the petition of a proper purpose and no proof offered, observed: "Nor is there any allegation in the petition nor proof of any wrongdoing by any of the defendants, the only allegation is that the officers owned and controlled 2700 shares of stock and were attempting to make a sale of it, which would give to the purchaser virtual control of the corporation and place plaintiff in a precarious position at 'their mercy because they will have in their possession in excess of one-third of the outstanding shares of this corporation' etc. This is denied by defendants' answer and by the uncontradicted testimony of Mr. Bickel, Jr. Obviously a stockholder has a right to sell his stock or to buy the stock of a corporation without let or hindrance, unless there is some charge that in doing so he would be violating some obligation to the plaintiff or to someone else. The order appealed from cannot stand." *Bart v. Pine Grove, Inc.*, 62 N. E. 2d 127. Milliken & Vollers (Seago, Bradley & Vetter, of counsel), of Chicago, for appellants. William Henning Rubin of Chicago, for appellee.

**New York.**

**Sec. 61-b, General Corporation Law, as amended in 1945, ruled not applicable to actions pending at time of enactment of section in 1944.** In a stockholder's derivative suit, the corporate defendants moved to compel the plaintiff to post security under Sec. 61-b of the General Corporation Law, as amended by the Laws of 1945, Ch. 869, Sec. 3. The action was pending at the time of the enactment of Sec. 61-b in 1944 and, except for the 1945 amendment, was regarded by the Supreme Court, Special Term, New York County, as falling within the decision of the Court of Appeals in *Shielcrawt v. Moffett*, 294 N. Y. 180, 61 N. E. 2d 435, (The Corporation Journal, June, 1945, page 366), holding that, Sec. 61-b does not apply to actions pending when it went into effect. The defendants' point on the present motion was that the 1945 amendment makes Sec. 61-b applicable to pending actions and thus overcomes the decision of the Court of Appeals in the *Shielcrawt* case. The court, after an examination of the 1945 act, came to the following conclusion: "It seems clear on the whole, therefore—from the nature and arrangement of the statutory revision made by the 1945 act, the incorporation of all provisions for the assessment and payment of the expenses of officers, directors and employees in a new article in the General Corporation Law and the separate treatment of Sec. 61-b, and from the selectivity of the language used in Sec. 5 of the 1945 act—that the provision of Sec. 5,

making the act retrospective as to the 'payment or assessment of expenses', relates only to those provisions of the act specifically referring to the payment or assessment of the expenses of directors, officers or employees against the corporation and does not apply to Sec. 61-b." The Court of Appeals was regarded as holding, in the *Shielcrawt* case "that an unequivocal declaration of intention on the part of the legislature to make Sec. 61-b retroactive would be necessary before the court could give it that effect." The language of the 1945 act was viewed as not unequivocal, looking at it most favorably for the defendants, but rather the indication was that the legislature intended that the retrospective provision should not extend to Sec. 61-b. The motion was, therefore, denied. *Taylor v. Barrand, et al.*, 56 N. Y. S. 2d 342. Sol O. Maltz of New York City, for plaintiff. Lorenz, Finn & Lorenz of New York City, for Manufacturers Trading Corporation. Kupfer, Silberfeld, Nathan & Danziger of New York City, for defendants Barrand, Bruff and Sachs.

**Motion to dismiss derivative suit granted, with leave to amend complaint, where affirmative allegation was lacking that plaintiff was a stockholder at the time of the transaction in question; motion to dismiss denied as to maintenance of suit as officer and director.** Plaintiff brought this action as an officer and director of defendant corporation and individually as a stockholder on behalf of himself and all other stockholders similarly situated, against the individual defendant, officers and directors of defendant corporation, charging them with misconduct and to compel them to account and for other appropriate relief. Defendants moved to dismiss the complaint upon the ground that it failed to state facts sufficient to constitute a cause of action and that the plaintiff was without legal capacity to sue. While plaintiff alleged that he was the owner and holder of 294 shares of the company's common stock, there was an absence of an affirmative allegation that he was a stockholder at the time of the transaction complained of. The New York Supreme Court, Special Term, New York County, indicated that this was a fatal defect and, as to this the motion was granted, with leave to serve an amended complaint within a stated period. There had been an attempted removal of plaintiff as an officer without the action having been taken at a directors' meeting. The court indicated that the attempted removal had no effect, if a nullity, and would not prevent the maintenance of the action by him as such an officer and director and the motion to dismiss on that ground was denied. *Wyckoff v. Sagall et al.*, 56 N. Y. S. 2d 392. Benjamin A. Hartstein of New York City, for plaintiff. Handelman & Ives (Leon Wagman, of counsel), of New York City, for defendant.

**Virginia.**

**Statutory remedy of appraisal of stock available to preferred stockholders dissenting to merger, where cumulative dividends were unpaid, ruled sole remedy.** Appellants were holders of the preferred stock of a Virginia company which had merged with a Delaware

corporation. At the time of the merger, cumulative unpaid dividends on the appellants' preferred stock amounted to a total of $84 per share. This suit was instituted in the Law and Equity Court of the City of Richmond against the corporations and others for a determination of the rights of appellants as dissenting holders of such preferred stock. The merger agreement contained provision that holders of the preferred stock of the Virginia corporation were to receive in exchange for each preferred share held, and unpaid dividends thereon, one share of "Class A Preference" stock and one share of common stock of the continuing corporation. Within the time fixed by Code, Sec. 3822, notice was given to the merged corporation that appellants elected to dissent from the merger and to enforce their appraisal rights under Sec. 3822, under which it was provided that a dissatisfied stockholder, giving notice of his dissent within three months was entitled to receive from a merged corporation the fair cash value of his stock as of the day before the vote for the agreement of merger. Upon appeal to the Supreme Court of Appeals of Virginia, appellants contended that, in addition to the remedy available under Sec. 3822, they could insist that the continuing corporation pay them the par value of their stock, plus accrued dividends thereon, the charter of appellants' corporation having provided for such payment "in case of the liquidation or dissolution of this corporation, or a distribution of its assets, except by payment of dividends." The Supreme Court of Appeals reversed a judgment in favor of appellants for such payment, subject to certain restrictions. The court ruled that the merger did not effect a dissolution of appellants' company and that Sec. 3822 provided an exclusive remedy, giving "every stockholder of a merging corporation an election either to dissent and secure in the prescribed manner the fair cash value of his stock, or, if he fails to dissent, to be bound by the terms of the merger." The bill of complaint was ordered dismissed "without prejudice to the appellants to pursue, in the proper court, their remedy for the fair cash value of their stock pursuant to the provisions of Code, Sec. 3822, as amended." *Adams et al. v. United States Distributing Corporation et al.*, 34 S. E. 2d 244. John J. Wicker, Jr., of Richmond and Seymour M. Heilbron, George M. Jaffin and Charles Winkelman of New York City, for appellants. R. Grayson Dashiell and William W. Crump of Richmond, and James V. Hayes, J. Leo Coupe and Donovan, Leisure, Newton & Lumbard of New York City, for appellees.

## Foreign Corporations

**New York.**

**Federal court denies defendant corporation's motion that its stockholder, in derivative suit, give security for expenses under Section 61-b, Gen. Corp. Law.** Plaintiff, a stockholder in a Delaware corporation, instituted this derivative action in the United States District Court, Southern District of New York, for an accounting and other

relief. That corporation, a defendant, asked an order requiring plaintiff to give security in the amount of $50,000 in accordance with Sec. 61-b of the General Corporation Law of New York. That section permits a corporation, in whose right a stockholder's action is brought, to require the plaintiff to give security for expenses where the action is instituted by the holder or holders of less than five per centum of the outstanding shares of any class of the corporation's stock or voting trust certificates, unless the securities so held have a market value in excess of $50,000. Plaintiff held less than such five per centum of the shares and the market value of his holdings was less than $50,000. The court upheld plaintiff in his contention that the provisions of the New York law mentioned are inapplicable to suits in federal courts, being procedural and not substantive. Referring to Section 61-b, the court remarked: "It does not bear in any way upon the merits. Whether the security required was given, or not asked, the determination of the merits would not be in any way affected. Plaintiff would still be granted or denied relief depending upon the proof, and not upon compliance with the statute." Defendant's motion was denied. *Boyd v. Bell et al.*, United States District Court, Southern District of New York, June 29, 1945. Abraham L. Pomerantz (I. Gainsburg and Samuel Gottlieb, of counsel), for plaintiff. Gerald J. Dean, for defendant Northeastern Water Company. Commerce Clearing House Court Decisions Requisition No. 342490.

**Motion, to require plaintiffs in derivative suit to give security for defendants' expenses under 1945 New Jersey statute similar to Sec. 61-b, Gen. Corp. Law of New York, denied.** In *Shielcrawt et al. v. Moffett et al.*, 294 N. Y. 180, 61 N. E. 2d 435, (The Corporation Journal, June, 1945, page 366), the Court of Appeals of New York ruled that Section 61-b of the General Corporation Law, permitting a corporate defendant to require the plaintiffs in a derivative suit to give security for expenses under certain circumstances related to the amount of stock held, was inapplicable to an action pending when the section went into effect. The defendant company, a New Jersey corporation, subsequently moved, in the trial court, the Supreme Court, Special Term, New York County, that plaintiffs be required to furnish security for defendants' expenses under Chapter 131, Laws of 1945 of New Jersey, which is substantially identical with Section 61-b of the New York General Corporation Law, except for an unequivocal expression of retroactivity. The defendant argued that both statutes were substantive, and, therefore, that the New Jersey statute, being the law of its domicile, governed, while the plaintiff asserted that both statutes were procedural and had no extraterritorial effect. The court noted that defendant did business in New York. It remarked that "a major concern is whether Section 61-b is procedural in the sense that it is the type of statute which our Courts may apply conveniently, practically and properly to foreign corporations doing business in this state to the end that our procedure shall maintain a desirable measure of uniformity in derivative stockholder suits. I believe that Section 61-b, and it must therefore follow, its New Jersey

counterpart, are procedural in that sense." Referring to a memorandum of the Governor of New Jersey which stressed the necessity of the new legislation "as a step in the direction of purging our Courts of 'strike suits,' which abuse the judicial process," the court noted that the application of the New Jersey law to actions "instituted or maintained in the right of any domestic or foreign corporation" indicated an intention to regulate only the institution or maintenance of actions brought within the State of New Jersey. As a primary concern with court processes was indicated, the New Jersey law was viewed as remedial in nature. The New York statute was regarded as, in effect, a condition on which the right to do business within the state, depends. In denying the motion, the court observed: "The accident of chronology which renders Section 61-b retrospectively inapplicable to this suit must not blink the fact that New York State has enacted a law designed to regulate within this state the same conditions which gave impulse to the New Jersey statute." *Shielcrawt et al. v. Moffett et al.*, 56 N. Y. S. 2d 134. Oscar Schlieff (I. Gainsburg and Samuel Gottlieb, of counsel), of New York City, for plaintiffs. Samuel A. McCain of New York City (Walter A. Dane of Boston, Mass., and Ralph M. Carson of New York City, of counsel), for defendants.

**Service upheld where made on corporation maintaining an office and conducting the regular solicitation of business.** In this case a third party defendant appeared specially in the United States District Court, Southern District of New York and moved to vacate service, as to it, as an unlicensed foreign corporation not within the jurisdiction and on the further ground that service was made on a person not authorized to receive it. Service was made upon a salesman who, with a stenographer, occupied an office leased by the company in New York City. The company's name appeared on the door and in telephone directories. The salesman solicited in New York City and parts of New Jersey and Connecticut. All orders were subject to acceptance at the corporation's main office in Pennsylvania and all shipments made from the factory there to the customer. Payments were made to the home office, but occasionally the salesman prodded an overdue account or received a check from a customer, which he immediately forwarded to the main office. He had no company funds at his disposal except a petty cash fund of $25. Occasionally the salesman investigated complaints, adjustments being effected by the main office. The court concluded that the company came within the rule that the maintenance of an office, plus the regular solicitation of business constitutes the transaction of business for the purpose of subjecting a corporation so engaged to a given jurisdiction. Service upon the salesman was also ruled proper. *Snyder v. J. G. White Engineering Corp.*, United States District Court, Southern District of New York, June 5, 1945. Blank & Convisser, for plaintiff. William Paul Allen, for the McKay Co. Glenney, Mathews & Hampton, for defendant and third party plaintiff. Desmond J. Barry, for third party defendant. Commerce Clearing House Court Decisions Requisition No. 341160. (NY CT Service, page 20,939.)

# *This Is What You Do—and What Happens...*

## *"Suppose I ha haps to qu do to mak pany's ser about it th*

Lawyers often ask t question. It may be sum up in just a few words.

First, you just teleph or telegraph, or write, nearest office. A represe tive—a carefully picked who has been trained by prenticeship all through organization until he kn its capacities and resou and how to invoke them an engineer knows his gine—will respond.

Perhaps you have alre settled with your client the preliminary details simply want them ca out. Then our repres tive will take them over you. He will set in mo whatever machinery in

***a company to incorporate, or per-in one or more states. What do I e of The Corporation Trust Com-—and what does that company do ll make money for ME?"***

organization is needed. All papers will be filed, the incorporators' meeting will be held, all necessary notices will be published, and statutory representation for your client will be established. And all this no matter in what state or territory of the United States or what province of Canada the company is to be incorporated or qualified.

Sometimes, however, you are not so far along. You may not be certain about the client's corporate name being available, or as to the best state in which to incorporate, or as to the safest wording for certain clauses of the charter, or as to the various classes of stock and what restrictions to put on each, or as to the best method of issuing stock in payment for services or property in order to save your client as much as possible in income and stamp taxes. In such cases our representative will bring you from our files the most complete data, precedents, etc., obtained from public sources, to assist you in deciding every point.

What you do is simply to put the BURDENS of your corporation work on us, and leave yourself free for the creative work. Write or telephone the office nearest you —see second cover for complete list.

**Oklahoma.**

**Single transaction ruled not to constitute doing of business.** A resident of Oklahoma called at the place of business of the plaintiff corporation in Kansas and signed an agreement to purchase an automobile from the plaintiff. Subsequently the corporation brought the automobile into Oklahoma to deliver it, gave a demonstration ride and delivered it to the purchaser upon his execution of notes and a chattel mortgage. This action was instituted in an Oklahoma Court by the Kansas company to rescind the contract and to recover damages. It was argued that a judgment for the corporation could not be sustained for the reason that the lower court erred in holding that plaintiff was not doing business under an Oklahoma statute denying an unlicensed foreign corporation the right to use the state courts and which declares a contract made in violation of the statute void. The Supreme Court of Oklahoma concluded that the lower Court did not err in finding that the acts and conduct of plaintiff did not constitute doing business within the State of Oklahoma, remarking that the Supreme Court at Oklahoma "has followed the rule that in order to be doing business within the State of Oklahoma within the purview of said above sections there must be a series of acts showing an intention to do business in violation of the statutes and a single instance or transaction does not contravene the terms of the statutory enactments." *Walden et al. v. Automobile Brokers, Inc.*, 160 P. 2d 400. O. B. Martin of Blackwell, for plaintiff in error, Dr. Dewey H. Walden. John M. Lawrence of Oklahoma City, pro se. Wertz, Hielsch and Zacharias of Wichita, Kansas, and Neal A. Sullivan of Newkirk, for defendant in error.

**Wisconsin.**

**Unlicensed company, with principal business office in state, performing services for local company, held doing business and barred from recovery on contract.** A Maryland corporation, the plaintiff, was permitted to intervene in reorganization proceedings under the Bankruptcy Act involving a Wisconsin corporation, the debtor, and file its petition to recover from the debtor certain moneys in which it claimed a proprietary interest under a contract with the debtor. The Federal District Court for the Eastern District of Wisconsin held that the contract relied upon was void for non-compliance with the Wisconsin statute requiring the licensing of foreign corporations doing business in that state, and dismissed the petition. The judgment was affirmed by the Circuit Court of Appeals, Seventh Circuit. Plaintiff furnished the debtor with a service, its "Pre-Fabrication and Plant Service," which included plans and designs of houses and other buildings, as well as operational methods of streamlined factory production and assembly line methods, under supervision of a qualified housing engineer supplied by plaintiff, who trained the debtor's personnel in the technique of these methods, the plans remaining the property of the plaintiff. Plaintiff secured contracts for the debtor

and was to receive an amount equal to two percent of the face of such contracts. Neither party was required to do anything with respect to the actual erection of the buildings. Plaintiff had moved its principal office to Wisconsin, where its general manager and various employees supervised and participated in the manufacturing process mentioned, and sent certain employees to the place of erection. The appellate court regarded the evidence as supporting the District Court in ruling the Maryland company was carrying on business in violation of the statute. *In re Bell Lumber Co.*, 149 F. 2d 980. J. Robert Kaftan of Green Bay, Wisconsin, for appellant. E. L. Everson of Green Bay, Wisconsin. Walter A. Rice of South Bend, Ind., George E. Bills and Alex Wilmer of Green Bay, Wis., for appellees.

## Taxation

**Minnesota.**

**Taxable income of a foreign corporation with a commercial domicile in Minnesota held not to include dividends from stocks of its Canadian subsidiaries which conducted their business separately in Canada.** The question presented was whether a foreign corporation with a commercial domicile in Minnesota was required to include in its taxable income, for the measurement of the franchise tax, dividends from corporate stock of subsidiaries conducting business in Canada and connected in no way with the corporation's Minnesota business; and, if so, whether such requirements offended the due process clause of the Federal Constitution. Relator was a New Jersey corporation, licensed in Minnesota. It conducted a wholesale hardware business, with branches in several states, the business being directed from Duluth, Minnesota, where the executive office was located. It was not disputed that a commercial domicile had been established in Minnesota. The tax in question did not involve income arising from the corporation's hardware business. The tax related to dividends received by the relator on the stock of three wholly-owned Canadian corporations which operated a separate hardware business in Canada, all such activities being conducted apart from the relator's business in the United States. The secretary and treasurer of relator corporation were also respectively secretary and treasurer of each of the Canadian corporations. The Board of Tax Appeals had ruled that, by virtue of relator's commercial domicile in Minnesota, the entire income from the Canadian stocks should be included in the measurement of the franchise tax. Upon appeal, the Minnesota Supreme Court concluded, from cases which it cited, that it was clearly established "that before the state in which a foreign corporation is commercially domiciled may tax the intangibles of said corporation it must appear that such intangibles have a business situs or are related to and form an integrated part of the business of said corporation there. In so holding, it is our conclusion that we are in accord with the previous decisions of this court on this question, as well as those of the United States Supreme Court. Accord-

ingly, since the tax here sought to be collected does not relate to intangibles or income therefrom clearly within the state's taxing jurisdiction, it is our conclusion that it is not covered by or included within the statutes whereunder respondent seeks to collect it. Reversed with directions to set aside the tax based upon or measured by dividends derived from the corporate stocks of the Canadian corporations." *Marshall-Wells Co. v. Commissioner of Taxation,** Minnesota Supreme Court, August 10, 1945. Fowler, Youngquist, Furber, Taney & Johnson and Gillette, Nye, Harris & Montague, attorneys for relator. J. A. A. Burnquist, Attorney General, and David W. Lewis, attorneys for respondent. Commerce Clearing House Court Decisions Requisition No. 343663.

* The full text of this opinion is printed in **The Corporation Tax Service, Minnesota, page 1740.**

**Ohio.**

**Treatment of accounts receivable and deposits in banks outside Ohio for franchise tax purposes considered by State Supreme Court.** Appellant, engaged in the business of manufacturing and selling cash registers, accounting machines, files, etc., was a Maryland corporation with its manufacturing plant and executive and accounting offices located in Dayton, Ohio. It maintained branch offices in nine states, including Ohio. On a question involving the computation of the franchise tax, whether the accounts receivable of the corporation, arising from sales outside Ohio and filled from a stock of goods in Ohio, had an Ohio situs for the purpose of taxation, the Supreme Court of Ohio ruled that such accounts receivable were to be considered as arising out of business transacted in Ohio and had an Ohio situs and should be included in the base for the computation of the franchise tax. The court also ruled that general deposits of the company in banks outside Ohio, used for the purposes of its business generally, both within and without Ohio, should not be included in the base for the computation of the franchise tax. *National Cash Register Co. v. Evatt,** 62 N. E. 2d 327. Graydon, Head & Ritchey of Cincinnati, for appellant. Hugh S. Jenkins, Atty. General, and Daronne R. Tate of Columbus, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Ohio, page 1372.**

**Pennsylvania.**

**Pennsylvania county court declines to entertain suit for collection of Ohio personal property taxes which had not been reduced to judgment.** Plaintiff County Treasurer of Hamilton County, Ohio, brought suit in assumpsit in the Court of Common Pleas of Montgomery County, Pennsylvania, seeking to collect from defendant money alleged to be due from her for personal property taxes assessed by Hamilton County, Ohio against her while she was a resident there.

The statement of claim set forth the manner and amounts of the assessments, as well as the amounts paid on account by defendant. It also cited the statutory authority of plaintiff to enforce the payment of personal taxes by civil action and averred that, under the law of Ohio, personal property taxes constitute a personal obligation or debt. Defendant contended that the tax laws of a state have no extra-territorial effect and that a Pennsylvania court would not entertain an action for the collection of taxes imposed by the revenue laws of Ohio, notwithstanding the "full faith and credit" clause of the Federal Constitution. The Court of Common Pleas, Montgomery County, ruled in favor of the defendant, observing that the Supreme Court of the United States had not expressed an opinion on the question raised, although it had decided that one state was required to give full faith and credit to a judgment for taxes levied upon the statutes of a foreign state. The Court of Common Pleas concluded that, regardless of the justice of the claim and the duty of the defendant to pay, the suit would not be entertained. *County Treasurer of Hamilton County, Ohio v. Hartzell,** Court of Common Pleas, Montgomery County, July 3, 1945. Commerce Clearing House Court Decisions Requisition No. 343648.

* The full text of this opinion is printed in **The Corporation Tax Service,** Pennsylvania, page 8987-11.

**Wisconsin.**

**County Circuit Court rules foreign corporation's income from securities not taxable under income tax law.** Petitioner was a Delaware company, licensed in Wisconsin where its principal office and a manufacturing plant were located. There its officers resided and performed their duties and there all directors' and stockholders' meetings were held. There was a manufacturing plant at Niagara Falls, New York and sales offices were maintained in New York, Chicago and Los Angeles, some financial affairs being attended to in Chicago. The question concerned the liability to taxation under the Wisconsin income tax law of income from securities, purchased with corporate funds and held for corporate purposes, which were kept principally in Wisconsin and occasionally at Chicago. The Circuit Court of Dane County affirmed a judgment of the Wisconsin Board of Tax Appeals holding that income from such intangibles was not properly taxable by the State of Wisconsin. *Kimberly-Clark Corporation v. Wisconsin Department of Taxation,** Circuit Court, Dane County, July 24, 1945. Commerce Clearing House Court Decisions Requisition No. 343540.

* The full text of this opinion is printed in **The Corporation Tax Service,** Wisconsin, page 1771-21.

# Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 4. *Hewit v. Freeman,* 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945.**

MINNESOTA. Docket No. 386. *American Stores Dairy Co. v. Wisconsin Department of Taxation,* 17 N. W. 2d 596. (The Corporation Journal, May, 1945, page 353.) Wisconsin income tax act—proration of tax between inside business and outside business of foreign corporation—sales by subsidiary to parent. **Appeal filed, August 30, 1945. Appeal dismissed, per curiam, for want of a properly presented Federal question, October 8, 1945.**

NORTH DAKOTA. Docket No. 35. *Asbury Hospital v. Cass County et al.,* 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.,* 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. **Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945.**

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver),* 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.**

WASHINGTON. Docket No. 107. *International Shoe Company v. State et al.,* 154 P. 2d 801. (The Corporation Journal, May, 1945, page 342.) Unemployment insurance—delinquency assessment—service of process on foreign corporation. **Appeal filed, June 4, 1945. Jurisdiction noted, June 18, 1945.**

WEST VIRGINIA. Docket No. 471. *Carnegie-Illinois Steel Corporation v. Alderson,* 34 S. E. 2d 737. (The Corporation Journal, October, 1945, page 15.) West Virginia business-occupation tax—taxation of manufacture of armor plate for Federal Government—private operation of Government owned plant located on Government reservation. **Petition for certiorari filed, September 29, 1945.**

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* Data compiled from **CCH U. S. Supreme Court Service, 1945-1946.**

# Regulations and Rulings

ARIZONA—Foreign corporations qualified in the state must file annual reports and pay the $15 registration fee pursuant to Sec. 53-901, even though doing no business in the State during the year. (Opinion of Attorney General to Corporation Commission, Arizona CT (Corporation Tax) Service, ¶ 7808.)

CALIFORNIA—Interest is not allowable on refund claims which are based upon the renegotiation of war contracts. (Letter, Franchise Tax Commissioner, California CT, ¶ 8-929.)

GEORGIA—The Department of Revenue has stated that a foreign corporation subject to the Georgia income tax is doing business in the state and, in order to protect its constitutional rights to sue and be sued, it must qualify with the Secretary of State by filing the annual statement of registration required of all corporations doing business within the state. (Georgia CT, ¶ 2-010.02.)

KENTUCKY—An Ohio corporation establishing a branch manufacturing plant in Kentucky is doing business in the state and must qualify as a foreign corporation. (Opinion of the Attorney General, Kentucky CT, ¶ .012.)

LOUISIANA—Articles of reduction of capital stock are required to be certified by the office of the Secretary of State and become effective on the date on which such certificate is issued by the Secretary of State. (Opinion of the Attorney General to the Secretary of State, Louisiana CT, ¶ 1-406.)

A foreign corporation which maintains a warehouse in Louisiana and fills orders from Merchandise in storage there is doing business in the state and is required to qualify and comply with the statutes governing foreign corporations and imposing franchise taxes, whether the goods are shipped to Louisiana or out-of-state customers. (Opinion of the Attorney General, Louisiana CT, ¶ 3-002.)

MISSOURI—A corporation which was incorporated on December 30, 1944, is considered "organized" on that date within the meaning of the franchise tax law and therefore is liable for the franchise tax for the year 1945. (Opinion of the Attorney General to the State Tax Commission, Missouri CT, ¶ 5-001.)

NEW MEXICO—When a broadcasting corporation is engaged in business in New Mexico and contends it is engaged exclusively in interstate commerce and not subject to franchise tax assessment, the determination is made from the franchise tax report (which must be filed) whether or not such company is actually engaged in intrastate business and is subject to the franchise tax assessment. (Opinion of the Attorney General to State Corporation Commission, New Mexico CT, ¶ 4-000.)

TEXAS—A common carrier motor carrier doing a wholly interstate transportation business is not required to pay the use tax on motor vehicles purchased by it in a foreign state and used exclusively in interstate commerce. (Opinion of the Attorney General to the Comptroller of Public Accounts, Texas CT, ¶ 51-918.)

# Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Income Tax due on or before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

NEW YORK—Second Installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1944 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

# The Corporation Trust Company's Supplementary Literature

*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.*

**Amendments to Delaware Corporation Law, 1945.** Contains complete text of the amendments adopted at the 1945 session of the legislature, giving for each one a brief explanation of its purpose and effect.

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**What! *We* Need a Transfer Agent? *Nonsense!*** The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

**Judgment by Default.** Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK 5, N. Y.





# THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

*[While no more binders are at present available, their production will be resumed as soon after the war as possible.]*